

ELECTRIC GENERAL RATE APPLICATION 2015

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**FINAL SUBMISSION OF MANITOBA  
KEEWATINOWI OKIMAKANAK INC.**

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## RECOMMENDATIONS

1. No increase in rates over 2% for next two years.
2. Manitoba Hydro be directed over the next two years to initiate and implement a full set of DSM programs for First Nations Reserves that provide a comparable saving over a similar time frame to conversion to gas heating from electric less cost of equipment conversion.
3. That all First Nations accounts be set up as separate classes at the same rates as others, but take into account reductions by the amount of mitigation costs, removable of the portion of the water rental and capital tax and Manitoba interest surcharge that make up a portion of the rate.
4. That a low income program be implemented that targets low income First Nations ratepayers.
5. That Manitoba Hydro set up and implement a program or procedure that would alleviate all current arrears by a combination of long term repayment terms and write-offs of all interest and penalties that will facilitate and encourage payment of past and current arrears.
6. In the alternative, a separate meter system be set up for all First Nation ratepayers which measures heating costs with rates to be set using the same methodology used to bill Hydro employees residing on First Nation reserves.

## Background

### *The Manitoba Hydro Act*

#### Purposes and objects of Act

2 The purposes and objects of this Act are to provide for the continuance of a supply of power adequate for the needs of the province, and to engage in and to promote economy and efficiency in the development, generation, transmission, distribution, supply and end-use of power and, in addition, are

- (a) to provide and market products, services and expertise related to the development, generation, transmission, distribution, supply and end-use of power, within and outside the province; and
- (b) to market and supply power to persons outside the province on terms and conditions acceptable to the board.

#### Price of power sold by corporation

**39(1)** The prices payable for power supplied by the corporation shall be such as to return to it in full the cost to the corporation, of supplying the power, including

- (a) the necessary operating expenses of the corporation, including the cost of generating, purchasing, distributing, and supplying power and of operating, maintaining, repairing, and insuring the property and works of the corporation, and its costs of administration;
- (b) all interest and debt service charges payable by the corporation upon, or in respect of, money advanced to or borrowed by, and all obligations assumed by, or the responsibility for the performance or implementation of which is an obligation of the corporation and used in or for the construction, purchase, acquisition, or operation, of the property and works of the corporation, including its working capital, less however the amount of any interest that it may collect on moneys owing to it;
- (c) the sum that, in the opinion of the board, should be provided in each year for the reserves or funds to be established and maintained pursuant to subsection 40(1).

#### Fixing of price by corporation

**39(2)** Subject to Part IV of *The Crown Corporations Public Review and Accountability Act* and to subsection (2.1), the corporation may fix the prices to be charged for power supplied by the corporation.

#### Equalization of rates

**39(2.1)** The rates charged for power supplied to a class of grid customers within the province shall be the same throughout the province.

## Interpretation

**39(2.2)** For the purpose of subsection (2.1),

(a) grid customers are those who obtain power from the corporation's main interconnected system for transmitting and distributing power in Manitoba; and

(b) customers shall not be classified based solely on the region of the province in which they are located or on the population density of the area in which they are located.

**39(3) to (7)** [Repealed] S.M. 1988-89, c. 23, s. 34.

## *The Public Utilities Act*

### Application to Manitoba Hydro

**2(5)** Subject to Part IV of *The Crown Corporations Public Review and Accountability Act* and except for the purposes of conducting a public hearing in respect of an application made to the board under subsection 38(2) or 50(4) of *The Manitoba Hydro Act*, this Act, other than subsection 83(4) and the regulations under that subsection, does not apply to Manitoba Hydro and the board has no jurisdiction or authority over Manitoba Hydro.

## *The Crown Corporations Public Review and Accountability Act*

### Hydro and MPIC rates review

**26(1)** Notwithstanding any other Act or law, rates for services provided by Manitoba Hydro and the Manitoba Public Insurance Corporation shall be reviewed by The Public Utilities Board under *The Public Utilities Board Act* and no change in rates for services shall be made and no new rates for services shall be introduced without the approval of The Public Utilities Board.

Definition, "rates for services"

**26(2)** For the purposes of this Part, "**rates for services**" means

(a) [repealed] S.M. 1995, c. 33, s. 5;

(b) in the case of Manitoba Hydro, prices charged by that corporation with respect to the provision of power as defined in *The Manitoba Hydro Act*;

(c) in the case of the Manitoba Public Insurance Corporation, rate bases and premiums charged with respect to compulsory driver and vehicle insurance provided by that corporation.

#### Application of Public Utilities Board Act

**26(3)** *The Public Utilities Board Act* applies with any necessary changes to a review pursuant to this Part of rates for services.

Factors to be considered, hearings

**26(4)** In reaching a decision pursuant to this Part, The Public Utilities Board may

(a) take into consideration

- (i) the amount required to provide sufficient moneys to cover operating, maintenance and administration expenses of the corporation,
  - (ii) interest and expenses on debt incurred for the purposes of the corporation by the government,
  - (iii) interest on debt incurred by the corporation,
  - (iv) reserves for replacement, renewal and obsolescence of works of the corporation,
  - (v) any other reserves that are necessary for the maintenance, operation, and replacement of works of the corporation,
  - (vi) liabilities of the corporation for pension benefits and other employee benefit programs;
  - (vii) any other payments that are required to be made out of the revenue of the corporation,
  - (viii) any compelling policy considerations that the board considers relevant to the matter,**
  - (ix) any other factors that the board considers relevant to the matter;** and
- (b) hear submissions from any persons or groups or classes of persons or groups who, in the opinion of the board, have an interest in the matter.

#### *Energy Savings Act*

Purposes of the fund

5(1) The purposes of the fund are to provide support for

(a) programs, services and projects

- (i) that encourage and realize efficiency improvements and conservation in the use of power, natural gas, other home heating fuels and, subject to subsection (3), water,
- (ii) that encourage and realize the use of renewable energy sources, including earth energy, and

(iii) that are designed to reduce greenhouse gas emissions that result from the use of home heating fuels in Manitoba;

(b) research and development of renewable energy sources and innovative energy technologies;

Efficiency and conservation programs and services

6 The programs and services for efficiency improvements and conservation referred to in subclause 5(1)(a)(i)

(a) must be generally designed and delivered to ensure

(i) that people living in rural or northern Manitoba, seniors and people with low incomes have access to those programs, services and projects, and

**(ii) that the corporation's residential customers, regardless of the energy source they use to heat their homes, have access to comparable programs, services and projects; and**

**(b) may specifically**

**(i) target particular locations or areas of Manitoba,**

**(ii) encourage the use of particular types of renewable energy sources, and**

**(iii) assist seniors, those with low incomes, tenants or other specified groups.**

The Affordable Utility Rate Accountability Act

WHEREAS, by reason of Manitoba's ownership of Manitoba Hydro and the Manitoba Public Insurance Corporation, Manitobans should benefit from low rates for electricity, natural gas for home heating, and auto insurance;

AND WHEREAS maintaining low rates for these products will help ensure Manitoba remains an affordable place to live, work and raise a family;

AND WHEREAS maintaining an affordable high quality of life benefits not only Manitoba families but also Manitoba's economy by attracting and retaining people;

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

## Court Precedent

*Advocacy Centre for Tenants Ontario and Ontario Energy Board*, Ontario Supreme Court of Justice.

[54] The “cost of service” determination will establish a benchmark global amount of revenues resulting from an estimated quantity of units of natural gas or electricity distributed. The Board could use this determination to fix rates on a cost causality basis. This has been the traditional approach.

[55] However, in our view, the Board need not stop there. Rather, the Board in the consideration of its statutory objectives might consider it appropriate to use a specific “method or technique” in the implementation of its basic “cost of service” calculation to arrive at a final fixing of rates that are considered “just and reasonable rates.” This could mean, for example, to further the objective of “energy conservation”, the use of incentive rates or differential pricing dependent upon the quantity of energy consumed. As well, to further the objective of protecting “the interests of consumers” this could mean taking into account income levels in pricing to achieve the delivery of affordable energy to low income consumers on the basis that this meets the objective of protecting “the interests of consumers with respect to prices.”

[56] The Board is engaged in rate-setting within the context of the interpretation of its statute in a fair, large and liberal manner. It is not engaged in setting social policy.

[60] The issue before the Court is that of jurisdiction, not how and the manner by which the Board should exercise the jurisdiction conferred upon it.

[61] In our view, and we so find, the Board has the jurisdiction to take into account the ability to pay in setting rates. We so find having taken into account the expansive wording of s. 36 (2) and (3) of the statute and giving that wording its ordinary meaning, having considered the purpose of the legislation within the context of the statutory objectives for the Board seen in s. 2, and being mindful of the history of rate setting to date in giving efficacy to the promotion of the legislative purpose.

[62] We also find that that interpretation is appropriate taking into account the criteria

articulated in *Driedger*, above, namely it complies with the legislative text, it promotes the legislative purpose and the outcome is reasonable and just.

*Toronto Hydro-Electric System Limited v. Ontario Energy Board*, Ontario Court of Appeal.

Public utilities -- Ontario Energy Board -- Ontario Energy Board concerned about large dividends paid by electricity distributor to affiliate at time when capital was needed for reinvestment in aging infrastructure -- Board imposing, as condition of rate decision, requirement that distributor obtain approval of majority of its independent directors before declaring any future dividends payable to its affiliates -- Board not exceeding its jurisdiction by imposing that condition



**No increase in rates over 2% for next two years.**

- Severe prejudice to MKO ratepayers MKO/MH I-3 page 23
- Not justified based upon current evidence
- No implementation NFAT recommendations
- Manitoba Hydro has not taken any steps to try to make the Province take on some responsibility for taking profits from the Utility while it made money and not contributing any of that back when times are bad
- In order to leave rates at 2% to 2016 to 2019 and at 4% thereafter requires Province to leave \$220 million per year for the 5 years
- In order to leave rates at 2.9 % and to 4% for same period Province needs to leave \$115 million per year for the 5 years (MH Exhibit 43)

**Manitoba Hydro be directed over the next two years to initiate and implement a full set of DSM programs for MKO First Nations Reserves that provide a comparable saving over a similar time frame to conversion to gas heating from electric less cost of equipment conversion.**

- Evidence of Hydro that no plan that is even close to the savings made by fuel conversion.
- No movement by Hydro or Province to set up independent DSM provider
- Affordable energy plan's most significant component is replacement of furnace which is not applicable or necessary in MKO communities.

**That all MKO First Nations accounts be set up as separate classes at the same rates as others, but take into account reductions by the amount of mitigation costs, removable of the portion of the water rental and capital tax and Manitoba interest surcharge that make up a portion of the rate.**

- distinct group with needs and conditions that justify separate rates and if not distinct enough to warrant separate rates due to uniform rate legislation then a class should be created
- in dealing with the appropriate rate PUB can take into account that First Nations should not be paying as part of its rate the amount being charged to mitigate damages to Hydro effected customers
- water rental costs and capital tax are taxes upon First Nations for goods and services provided on reserve and consumed on the reserve
- water rental costs and capital tax provide the Province with funds to be used for general purposes. First Nations Reserves do not benefit from Provincial funding and the inclusion of these costs in their rates is not justified

**That a low income program be implemented that targets low income First Nations ratepayers.**

- We adopt all of the recommendations made by Mr. Coltan and strongly argue that until such time as a program is implemented no severe rate increases should be implemented and that MKO First Nations need to be involved in the discussion on the build of the program
- This should be in addition to the fixing of fair and reasonable rates for MKO rate payers.

**That Manitoba Hydro set up and implement a program or procedure that would alleviate all current arrears by a combination of long term repayment terms and write-offs of all interest and penalties that will facilitate and encourage payment of past and current arrears.**

- Given the huge amount of arrears and the percentage of ratepayers who are in arrears in MKO communities an imposition of new higher rates will only increase the amount of arrears, the percentage of people in arrears and a higher rate of shut offs
- MKO-Coalition/MH I-2H question as to what being done in regards to arrears on First Nations-MH did not answer the question.
- MMF-MH II -9 p 90 day+ arrears by month  
Winnipeg 1.66% to 2 %  
First Nations 17% to 24%
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- In the ten months of March through December 2014, Manitoba Hydro issued 16% more notices of disconnection than it did in the equivalent 10-month period in 2013. Colton direct evidence page GAC Exhibit 3

**In the alternative, a separate meter system be set up for all First Nation ratepayers which measures heating costs with rates to be set using the same methodology used to bill Hydro employees residing on First Nation reserves.**

- Affordable heat is not a luxury nor is it unnecessary. It is a matter of life and death in northern Manitoba. It affects the health and safety of all First Nations residents.
- Hydro has already determined that such a system is necessary for its own employees and has a method of calculating and billing under that system.